



DEPARTMENT OF MENTAL HEALTH
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February 2, 2021

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL TO WAIVE SPECIALTY MENTAL HEALTH SERVICES COUNTYWIDE
MAXIMUM ALLOWANCES IN THE DETERMINATION OF REIMBURSABLE COSTS
FOR LEGAL ENTITY COST REPORTS AND SETTLEMENTS DUE TO COVID-19**

(ALL SUPERVISORIAL DISTRICTS) (3 VOTES)

SUBJECT

The California Department of Health Care Services (DHCS) submitted a request to amend the State Plan and update the Certified Public Expenditure (CPE) Protocol as a result of the COVID-19 pandemic. The Centers for Medicare and Medicaid Services (CMS) approved the amended State Plan and updated CPE Protocol on May 13, 2020, and June 10, 2020, respectively.

In order to apply the changes that are applicable to the County, the Department of Mental Health (DMH) is requesting approval to exclude the Countywide Maximum Allowances (CMA) from consideration when calculating the net allowable cost of services provided by Legal Entity (LE) contractors during the period beginning March 1, 2020, and continuing through termination of the public health emergency created by the COVID-19 pandemic.

IT IS RECOMMENDED THAT YOUR BOARD:

Approve and instruct the Director of Mental Health, or his designee, to suspend the CMA only when calculating the net allowable cost of services rendered by LE contractors during the COVID-19 pandemic.

APPROVED

BY DELEGATED AUTHORITY

CHIEF EXECUTIVE OFFICE
COUNTY OF LOS ANGELES

February 2, 2021


FESIA A. DAVENPORT
CHIEF EXECUTIVE OFFICER

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

DHCS recognized that the COVID-19 pandemic and resulting safer-at-home orders created challenges for the delivery of Specialty Mental Health Services (SMHS). More specifically, many California counties and their network of LE contractors were experiencing reimbursement and cash flow challenges due to lower utilization and without commensurate decreases in cost.

In response, DHCS suspended the usual and customary charge limitation¹ to allow Mental Health Plans (MHPs) to claim federal reimbursement on amounts paid to its contractors at the contractors' net allowable cost. However, since DMH also considers the CMA in the determination of net allowable costs, it is necessary for us to suspend CMA in addition to applying DHCS' suspension of usual and customary charges (for cost reporting and settlement purposes only) in order for LE contractors to fully benefit from any additional federal reimbursement available through the cost settlement process. Generally, cost settlement occurs within 20 months of the fiscal year end.

Approval of this recommendation will enable DMH to settle with LE contractors based on their net allowable costs, subject to their Maximum Contract Amount (MCA) and funded program allocations, for services rendered during the period beginning March 1, 2020, and continuing through termination of the public health emergency created by the COVID-19 pandemic. In turn, this will enable LE contractors to preserve operating infrastructures and staff resources that are critically needed to continue service delivery.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

The recommended action is consistent with the County's Strategic Plan Goal III, Realize Tomorrow's Government Today, specifically Strategy III.3 - Pursue Operational Effectiveness, Fiscal Responsibility, and Accountability.

FISCAL IMPACT/FINANCING

There is no additional fiscal impact for the recommended action. DMH sets interim reimbursement rates (IRRs) with LE contractors in order to pay for services rendered during the fiscal year. DMH will continue to utilize the CMA when determining the maximum IRR per unit of service (UOS). Therefore, the LE contractors' IRRs will not increase beyond the CMA as a result of the recommended action. Further, DMH will not be increasing the LE contractors' MCA for their LE contracts in relation to this request to exclude the CMA from consideration when calculating the net allowable cost of services. As such, DMH will not pay beyond the MCA for LE contracts. There is no change in net County cost associated with the recommended action.

¹ CMS did not approve a waiver of usual or customary charge limitation for psychiatric inpatient hospital services. Hence, Hospital Administrative Day rates will continue to be settled at the lower of actual cost, usual or customary charge, or the Schedule of Maximum Allowances (SMA).

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency by the authorities vested in him by the Constitution and the laws of the United States, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and consistent with section 1135 of the Social Security Act (Act). On March 13, 2020, pursuant to section 1135(b) of the Act, the Secretary of the United States Department of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI of the Act as a result of the consequences of the COVID-19 pandemic, to the extent necessary, as determined by CMS, to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse. This authority took effect as of 6 p.m. Eastern Standard Time on March 15, 2020, with a retroactive effective date of March 1, 2020. The emergency period will terminate, and this state plan provision will no longer be in effect, upon termination of the public health emergency (PHE), including any extensions.

Pursuant to section 1135(b)(5) of the Act, for the period of the PHE, CMS modified the requirement at 42 C.F.R. 430.20 that the State submit State Plan Amendments (SPA) related to the COVID-19 pandemic by the final day of the quarter, to obtain a SPA effective date during the quarter, enabling SPAs submitted after the last day of the quarter to have an effective date in a previous quarter, but no earlier than the effective date of the PHE.

The State also requested a waiver of public notice requirements applicable to the SPA submission process. Pursuant to section 1135(b)(1)(C) of the Act, CMS waived public notice requirements applicable to the SPA submission process. Public notice for SPAs is required under 42 C.F.R. §447.205 for changes in statewide methods and standards for setting Medicaid payment rates, 42 C.F.R. §447.57 for changes to premiums and cost sharing, and 42 C.F.R. §440.386 for changes to Alternative Benefit Plans (ABPs). Pursuant to section 1135(b)(1)(C) the Act, CMS approved DHCS' request to waive these notice requirements otherwise applicable to SPA submissions.

These waivers or modifications of the requirements related to SPA submission timelines and public notice apply only with respect to SPAs that meet the following criteria: (1) the SPA provides or increases beneficiary access to items and services related to COVID-19 (such as by waiving or eliminating cost sharing, increasing payment rates or amending ABPs to add services or providers); (2) the SPA does not restrict or limit payment or services or otherwise burden beneficiaries and providers; and (3) the SPA is temporary, with a specified sunset date that is not later than the last day of the declared COVID-19 PHE (or any extension thereof).

CMS conducted its review of DHCS' SPA according to the statutory requirements at section 1902(a) of the Act and implementing regulations and approved the SPA on May 13, 2020, with an effective date of March 1, 2020.

CMS also approved the updated Certified Public Expenditure (CPE) Protocol on June 10, 2020.

Effective July 1, 2012, Assembly Bill (AB) 1297 (Statutes of 2011) directed DHCS to reimburse County MHPs based upon their CPEs that do not exceed the non-risk contract upper payment limit (UPL) applied to each MHP without regard to the SMA (except for Hospital Administrative Day psychiatric inpatient services). The intent of AB 1297 was for DHCS to claim federal reimbursement for each MHP based upon an approximation of its actual cost of providing the services without exceeding its UPL.

Although DHCS eliminated the SMA for MHPs, DHCS gave MHPs the option to establish a CMA to limit interim claims for reimbursement of SMHS provided by contract providers. Los Angeles County opted to implement the CMA upon DHCS' elimination of the SMA beginning July 1, 2012.

IMPACT ON CURRENT SERVICES

The modifications to existing LE reimbursable cost calculations will be implemented with an effective date of March 1, 2020, and have no impact on current services.

Respectfully submitted,



Jonathan E. Sherin, M.D., Ph.D.
Director

JES:GCP:ES
KN:SD:atm

c: Executive Officer, Board of Supervisors
Chief Executive Office
County Counsel
Auditor-Controller
Chairperson, Mental Health Commission